

104TH CONGRESS  
1ST SESSION

# S. 559

To amend the Lanham Act to require certain disclosures relating to materially altered films.

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IN THE SENATE OF THE UNITED STATES

MARCH 15, 1995

Mr. SIMPSON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Lanham Act to require certain disclosures relating to materially altered films.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Film Disclosure Act  
5       of 1995”.

6       **SEC. 2. AMENDMENT TO THE LANHAM ACT.**

7       Section 43 of the Act entitled “An Act to provide for  
8       the registration and protection of trade-marks used in  
9       commerce, to carry out the provisions of certain inter-  
10      national conventions, and for other purposes”, approved

1 July 5, 1946, commonly known as the Lanham Act (15  
2 U.S.C. 1125), is amended by adding at the end the  
3 following:

4 “(c)(1)(A) Any distributor or network that proposes  
5 to exploit a materially altered motion picture shall—

6 “(i) make a good faith effort to notify each ar-  
7 tistic author of the motion picture in writing and by  
8 registered mail and in a reasonable amount of time  
9 prior to such exploitation;

10 “(ii) determine the objections of any artistic au-  
11 thor so notified to any material alteration of the mo-  
12 tion picture;

13 “(iii) determine the objection of any artistic au-  
14 thor so notified by the questionnaire set forth in  
15 paragraph (9) to any type of future material alter-  
16 ations which are in addition to those specifically pro-  
17 posed for the motion picture to be exploited;

18 “(iv) if any objections under clause (ii) or (iii)  
19 are determined, include the applicable label under  
20 paragraph (6) or (8) in, or affix such label to, all  
21 copies of the motion picture before—

22 “(I) the public performance of the materi-  
23 ally altered motion picture if it is already in dis-  
24 tribution, or

1           “(II) the initial distribution of the materi-  
2 ally altered motion picture to any exhibitor or  
3 retail provider; and

4           “(v) in the event of objections by an artistic au-  
5 thor to any future material alterations, include or  
6 affix such objections to any copy of the motion pic-  
7 ture distributed or transmitted to any exhibitor or  
8 retail provider.

9           “(B) Whenever a distributor or network exploits a  
10 motion picture which has already been materially altered,  
11 such distributor or network shall not be required to satisfy  
12 the requirements of subparagraph (A) (i), (ii), and (iii),  
13 if—

14           “(i) such distributor or network does not fur-  
15 ther materially alter such motion picture; and

16           “(ii) such motion picture was materially altered  
17 by another distributor or network that complied fully  
18 with all of the requirements of subparagraph (A).

19           “(C)(i) The requirement of a good faith effort under  
20 subparagraph (A)(i) is satisfied if a distributor or network  
21 that has not previously been notified by each artistic au-  
22 thor of a motion picture—

23           “(I) requests in writing the name and address  
24 of each artistic author of the motion picture from  
25 the appropriate professional guild, indicating a re-

1        sponse date of not earlier than 30 days after the  
2        date of the request, by which the appropriate profes-  
3        sional guild must respond; and

4            “(II) upon receipt of such information from the  
5        appropriate professional guild within the time speci-  
6        fied in the request, notifies each artistic author of  
7        the motion picture in a reasonable amount of time  
8        before the exploitation of the motion picture by such  
9        network or distributor.

10        “(ii) The notice to each artistic author under this  
11        paragraph shall contain a specific date, not earlier than  
12        30 days after the date of such notice, by which the individ-  
13        ual so notified shall respond in accordance with subpara-  
14        graph (A)(ii). Failure of the artistic author or the appro-  
15        priate professional guild to respond within the time period  
16        specified in the notice shall relieve the distributor or net-  
17        work of all liability under subparagraph (A).

18        “(D) The requirements of this paragraph for an ex-  
19        hibitor shall be limited to—

20            “(i) broadcasting, cablecasting, exhibiting, or  
21        distributing all labels required under this section in  
22        their entirety that are included with or distributed  
23        by the network or distributor of the motion picture;  
24        and

1           “(ii) including or affixing a label described in  
2           paragraphs (6) and (8) on a materially altered mo-  
3           tion picture for any material alterations performed  
4           by the exhibitor to which any artistic author has ob-  
5           jected under subparagraph (A)(iii).

6           “(E)(i) The provisions of this paragraph shall apply  
7           with respect to motion pictures intended for home use  
8           through either retail purchase or rental, except that no  
9           requirement imposed under this paragraph shall apply to  
10          a motion picture which has been packaged for distribution  
11          to retail providers before the effective date of this sub-  
12          section.

13          “(ii) The obligations under this paragraph of a retail  
14          provider of motion pictures intended for home use shall  
15          be limited to including or distributing all labels required  
16          under this paragraph in their entirety that are affixed or  
17          included by a distributor or network.

18          “(F) There shall be no consideration in excess of one  
19          dollar given in exchange for an artistic author’s waiver of  
20          any objection or waiver of the right to object under this  
21          subsection.

22          “(2)(A) Any artistic author of a motion picture that  
23          is exploited within the United States who believes he or  
24          she is or is likely to be damaged by a violation of this  
25          subsection may bring a civil action for appropriate relief,

1 as provided in this paragraph, on account of such viola-  
2 tion, without regard to the nationality or domicile of the  
3 artistic author.

4 “(B)(i) In any action under subparagraph (A), the  
5 court shall have power to grant injunctions, according to  
6 the principles of equity and upon such terms as the court  
7 deems reasonable, to prevent the violation of this sub-  
8 section. Any such injunction may include a provision di-  
9 recting the defendant to file with the court and serve on  
10 the plaintiff, within 30 days after the service on the de-  
11 fendant of such injunction, or such extended period as the  
12 court may direct, a report in writing under oath setting  
13 forth in detail the manner and form in which the defend-  
14 ant has complied with the injunction. Any such injunction  
15 granted upon hearing, after notice to the defendant, by  
16 any district court of the United States—

17 “(I) may be served on the parties against whom  
18 such injunction is granted anywhere in the United  
19 States where they may be found; and

20 “(II) shall be operative and may be enforced by  
21 proceedings to punish for contempt, or otherwise, by  
22 the court by which such injunction was granted, or  
23 by any other United States district court in whose  
24 jurisdiction the defendant may be found.

1       “(ii) When a violation of any right of an artistic au-  
2 thor is established in any civil action arising under this  
3 subsection, the plaintiff shall be entitled to the remedies  
4 provided under section 35(a).

5       “(iii) In any action under subparagraph (A), the  
6 court may order that all film packaging of a materially  
7 altered motion picture (including film packages of motion  
8 pictures intended for home use through either retail pur-  
9 chase or rental) that is the subject of the violation shall  
10 be delivered up and destroyed.

11       “(C) No action shall be maintained under this para-  
12 graph unless—

13               “(i) the action is commenced within 1 year  
14 after the right of action accrues; and

15               “(ii) if brought by an artistic author designee,  
16 the action is commenced within the term of copy-  
17 right of the motion picture.

18       “(3) Any disclosure requirements imposed under the  
19 common law or statutes of any State respecting the mate-  
20 rial alteration of motion pictures are preempted by this  
21 subsection.

22       “(4) To facilitate the location of a potentially ag-  
23 grieved party, each artistic author of a motion picture may  
24 notify the copyright owner of the motion picture or any  
25 appropriate professional guild. The professional guilds

1 may each maintain a Professional Guild Registry includ-  
 2 ing the names and addresses of artistic authors so notify-  
 3 ing them and may make available information contained  
 4 in a Professional Guild Registry in order to facilitate the  
 5 location of any artistic author for purposes of paragraph  
 6 (1)(A). No cause of action shall accrue against any profes-  
 7 sional guild for failure to create or maintain a Professional  
 8 Guild Registry or for any failure to provide information  
 9 pursuant to paragraph (1)(A)(i).

10 “(5) As used in this subsection—

11 “(A) the term ‘artistic author’ means—

12 “(i) the principal director and principal  
 13 screenwriter of a motion picture and, to the ex-  
 14 tent a motion picture is colorized or its photo-  
 15 graphic images materially altered, the principal  
 16 cinematographer of the motion picture; or

17 “(ii) the designee of an individual de-  
 18 scribed in clause (i), if the designation is made  
 19 in writing and signed by the principal;

20 “(B) the term ‘colorize’ means to add color, by  
 21 whatever means, to a motion picture originally made  
 22 in black and white, and the term ‘colorization’  
 23 means the act of colorizing;

24 “(C) the term ‘distributor’—

1           “(i) means any person, vendor, or syn-  
2           dicator who engages in the wholesale distribu-  
3           tion of motion pictures to any exhibitor, net-  
4           work, retail provider, or other person who pub-  
5           licly performs motion pictures by means of any  
6           technology, and

7           “(ii) does not include laboratories or other  
8           providers of technical services to the motion pic-  
9           ture, video, or television industry;

10          “(D) the term ‘editing’ means the purposeful or  
11          accidental removal of existing material or insertion  
12          of new material;

13          “(E) the term ‘exhibitor’ means any local  
14          broadcast station, cable system, airline, motion pic-  
15          ture theater, or other person that publicly performs  
16          a motion picture by means of any technology;

17          “(F) the term ‘exploit’ means to exhibit publicly  
18          or offer to the public through sale or lease, and the  
19          term ‘exploitation’ means the act of exploiting;

20          “(G) the term ‘film’ or ‘motion picture’  
21          means—

22               “(i) a theatrical motion picture, after its  
23               publication, of 60 minutes duration or greater,  
24               intended for exhibition, public performance,  
25               public sale or lease, and

1           “(ii) does not include episodic television  
2           programs of less than 60 minutes duration (ex-  
3           clusive of commercials), motion pictures pre-  
4           pared for private commercial or industrial pur-  
5           poses, or advertisements;

6           “(H) the term ‘lexiconning’ means altering the  
7           sound track of a motion picture to conform the  
8           speed of the vocal or musical portion of the motion  
9           picture to the visual images of the motion picture,  
10          in a case in which the motion picture has been the  
11          subject of time compression or expansion;

12          “(I) the terms ‘materially alter’ and ‘material  
13          alteration’—

14               “(i) refer to any change made to a motion  
15               picture;

16               “(ii) include, but are not limited to, the  
17               processes of colorization, lexiconning, time com-  
18               pression or expansion, panning and scanning,  
19               and editing; and

20               “(iii) do not include insertions for commer-  
21               cial breaks or public service announcements, ed-  
22               iting to comply with the requirements of the  
23               Federal Communications Commission (in this  
24               subparagraph referred to as the ‘FCC’), trans-  
25               fer of film to videotape or any other secondary

1 media preparation of a motion picture for for-  
2 eign distribution to the extent that subtitling  
3 and editing are limited to those alterations  
4 made under foreign standards which are no  
5 more stringent than existing FCC standards, or  
6 activities the purpose of which is the restoration  
7 of the motion picture to its original version;

8 “(J) the term ‘network’ means any person who  
9 distributes motion pictures to broadcasting stations  
10 or cable systems on a regional or national basis for  
11 public performance on an interconnected basis;

12 “(K) the term ‘panning and scanning’ means  
13 the process by which a motion picture, composed for  
14 viewing on theater screens, is adapted for viewing on  
15 television screens by modification of the ratio of  
16 width to height of the motion picture and the selec-  
17 tion, by a person other than the principal director of  
18 the motion picture, of some portion of the entire pic-  
19 ture for viewing;

20 “(L) the term ‘professional guild’ means—

21 “(i) in the case of directors, the Directors  
22 Guild of America (DGA);

23 “(ii) in the case of screenwriters, the Writ-  
24 ers Guild of America–West (WGA–W) and the  
25 Writers Guild of America–East (WGA–E); and

1           “(iii) in the case of cinematographers, the  
2           International Photographers Guild (IPG), and  
3           the American Society of Cinematographers  
4           (ASC);

5           “(M) the term ‘Professional Guild Registry’  
6           means a list of names and addresses of artistic au-  
7           thors that is readily available from the files of a pro-  
8           fessional guild;

9           “(N) the term ‘publication’ means, with respect  
10          to a motion picture, the first paid public exhibition  
11          of the work other than previews, trial runs, and fes-  
12          tivals;

13          “(O) the term ‘retail provider’ means the pro-  
14          prietor of a retail outlet that sells or leases motion  
15          pictures for home use;

16          “(P) the term ‘secondary media’ means any me-  
17          dium, including, but not limited to, video cassette or  
18          video disc, other than television broadcast or theat-  
19          rical release, for use on which motion pictures are  
20          sold, leased, or distributed to the public;

21          “(Q) the term ‘syndicator’ means any person  
22          who distributes a motion picture to a broadcast tele-  
23          vision station, cable television system, or any other  
24          means of distribution by which programming is de-  
25          livered to television viewers;

1           “(R) the terms ‘time compression’ and ‘time ex-  
 2           pansion’ mean the alteration of the speed of a mo-  
 3           tion picture or a portion thereof with the result of  
 4           shortening or lengthening the running time of the  
 5           motion picture; and

6           “(S) the term ‘vendor’ means the wholesaler or  
 7           packager of a motion picture which is intended for  
 8           wholesale distribution to retail providers.

9           “(6)(A) A label for a materially altered version of a  
 10          motion picture intended for public performance or home  
 11          use shall consist of a panel card immediately preceding  
 12          the commencement of the motion picture, which bears one  
 13          or more of the following statements, as appropriate, in leg-  
 14          ible type and displayed on a conspicuous and readable  
 15          basis:

16          ‘THIS FILM IS NOT THE VERSION ORIGI-  
 17          NALLY RELEASED. \_\_\_\_\_ mins. and \_\_\_\_\_ secs.  
 18          have been cut [or, if appropriate, added]. The director,  
 19          \_\_\_\_\_, and  
 20          screenwriter, \_\_\_\_\_, object because this  
 21          alteration changes the narrative and/or characterization.  
 22          It has (also) been panned and scanned. The director and  
 23          cinematographer, \_\_\_\_\_, object be-  
 24          cause this alteration removes visual information and  
 25          changes the composition of the images. It has (also) been

1 colorized. Colors have been added by computer to the  
2 original black and white images. The director and cine-  
3 matographer object to this alteration because it eliminates  
4 the black and white photography and changes the photo-  
5 graphic images of the actors. It has (also) been electroni-  
6 cally speeded up (or slowed down). The director objects  
7 because this alteration changes the pace of the perform-  
8 ances.’

9 “(B) A label for a motion picture that has been mate-  
10 rially altered in a manner not described by any of the label  
11 elements set forth in subparagraph (A) shall contain a  
12 statement similar in form and substance to those set forth  
13 in subparagraph (A) which accurately describes the mate-  
14 rial alteration and the objection of the artistic author.

15 “(7) A label for a motion picture which has been ma-  
16 terially altered in more than one manner, or of which an  
17 individual served as more than one artistic author, need  
18 only state the name of the artistic author once, in the first  
19 objection of the artistic author so listed. In addition, a  
20 label for a motion picture which has been materially al-  
21 tered in more than one manner need only state once, at  
22 the beginning of the label: “THIS FILM IS NOT THE  
23 VERSION ORIGINALLY RELEASED.’.

24 “(8) A label for a film package of a materially altered  
25 motion picture shall consist of—

1           “(A) an area of a rectangle on the front of the  
 2           package which bears, as appropriate, one or more of  
 3           the statements listed in paragraph (6) in a conspicu-  
 4           ous and legible type in contrast by typography, lay-  
 5           out, or color with other printed matter on the pack-  
 6           age; and

7           “(B) an area of a rectangle on the side of the  
 8           package which bears, as appropriate, one or more of  
 9           the statements listed in paragraph (6) in a conspicu-  
 10          ous and legible type in contrast by typography, lay-  
 11          out, or color with other printed matter on the pack-  
 12          age.

13          “(9) The questionnaire required under paragraph  
 14          (1)(A)(iii) shall consist of the following statement and re-  
 15          lated questions:

16                 ‘In order to conform [insert name of motion  
 17                 picture], of which you are an “artistic author”, to  
 18                 ancillary media such as television, airline exhibition,  
 19                 video cassettes, video discs, or any other media, do  
 20                 you object to:

21                 ‘(a) Editing (purposeful or accidental deletion or ad-  
 22                 dition of program material)?

23                         Yes\_\_\_\_\_ No\_\_\_\_\_

24                 ‘(b) Time compression/time expansion/lexiconning?

25                         Yes\_\_\_\_\_ No\_\_\_\_\_

1       ‘(c) Panning and scanning?

2               Yes\_\_\_\_\_ No\_\_\_\_\_

3       ‘(d) Colorization, if the motion picture was originally

4 made in black and white?

5               Yes\_\_\_\_\_ No\_\_\_\_\_’.”

6 **SEC. 4. EFFECTIVE DATE.**

7       This Act and the amendments made by this Act shall

8 take effect 180 days after the date of the enactment of

9 this Act.

